

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	

COMMENTS OF SPRINT NEXTEL CORPORATION

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Summary

Sprint Nextel supports grant of the petitions for waiver of the Commission's rules to allow early deployment of 700 MHz broadband public safety networks, subject to timely and rigorous enforcement of conditions generally imposed on each waiver granted in May of this year. To the extent any waiver applicant operates an 800 MHz voice system, moreover, the Commission should condition any future waiver grant on the applicant's having met an objective milestone of basic *voice* operability. If rigorously enforced, conditional waivers have the potential to further the goal of deployment of a nationwide, interoperable public safety broadband network.

Early deployment waiver recipients must submit specific plans describing how they will create and maintain interoperability and then file quarterly reports documenting each waiver recipient's progress towards deployment. These conditions promote the public interest by helping to reduce the chance that an ultimately unprepared early waiver deployment may threaten the long-term goal of national interoperability. Rigorous enforcement of these conditions – combined with a definitive sunset date for the existing waiver grants – will help ensure that public safety agencies do not seek waivers without first having reasonably well-defined plans for a broadband network build out in the near-term.

Future waiver applicants should also demonstrate that they have taken the steps reasonably to be expected of them to maintain the operability of their current 800 MHz voice networks. Public safety licensees have had years to prepare for and transition their 800 MHz voice networks to new frequencies to remove the specter of potential interference. Despite substantial progress nationwide, some public safety licensees – including two of the present twenty-four waiver applicants – are not remotely close to having a plan to implement this critical

project. Requiring any waiver recipients to commence reconfiguring existing 800 MHz radio networks before building new 700 MHz radio networks provides a rational and narrowly tailored means of focusing limited public safety resources on the meaningful, near-term goal of achieving reliable voice operability. Just as important, requiring such a showing will help local jurisdictions develop the considerable planning, funding, construction, and operational skills necessary to achieve a sustainable, cost-effective, interoperable public safety broadband system in the most timely manner possible.

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I. INTRODUCTION

Sprint Nextel Corporation (“Sprint Nextel”) supports, subject to certain conditions, the twenty-four petitions filed by various entities (“Petitioners”) seeking waiver of the Commission’s rules to deploy interoperable broadband communications systems in spectrum currently licensed to the Public Safety Spectrum Trust.¹ Grant of these waivers subject to additional showings and conditions similar to those the Commission placed on the previous group of waiver recipients has the potential to assist in the deployment of a nationwide, interoperable public safety broadband network.²

¹ Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks, *Public Notice*, PS Docket No. 06-229, DA 10-1748 (Sept. 15, 2010) (“*Petitions Public Notice*”). Sprint Nextel’s comments apply to all of the petitions for waiver submitted in this matter.

² Requests for Waiver of Various Petitions to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Order*, 25 FCC Rcd. 5145 (2010) (“*Waiver Order*”).

The Commission has properly put a priority on achieving reliable 800 MHz voice operability. Those remaining public safety licensees that have not yet, at this very late stage in the 800 MHz reconfiguration process, reached a baseline agreement to achieve reliable voice operability approved by the 800 MHz Transition Administrator (“TA”), would appear especially ill-equipped to embark on the separate – and considerably more daunting and costly – task of planning, building and operating new 700 MHz systems. Therefore, the Commission should condition any further 700 MHz waiver grants on affected licensees having in hand the TA’s approval of a Frequency Reconfiguration Agreement (“FRA”) governing the terms of that waiver recipient’s 800 MHz reconfiguration. In fact, of the twenty-four pending waiver requests, only two public safety licensees have not yet received approval from the TA for their proposed implementation projects. By requiring that waiver applicants demonstrate some baseline commitment to voice operability, the Commission can reassure itself that the waiver applicants possess some measure of the immense financial, technical and operational expertise to construct a system for broadband interoperability on a timely basis.

II. THE COMMISSION SHOULD ENSURE THAT GRANT OF THE REQUESTED WAIVERS FURTHERS THE PUBLIC INTEREST IN A NATIONWIDE, INTEROPERABLE PUBLIC SAFETY NETWORK.

A. The Conditions the Commission Previously Imposed on 700 MHz Waiver Recipients Serve the Public Interest, Should Be Enforced, and Should Be Applied to Future Waivers.

In its May *Waiver Order*, granting conditional waivers to allow commencement of early deployment of 700 MHz networks for twenty-one previous petitioners, the Commission imposed a limited number of common-sense conditions on all waiver recipients.³ In particular, two

³ *Waiver Order* at ¶¶ 35-36, 63-64.

conditions –to submit interoperability showings and quarterly progress reports – are critical to ensuring that early deployment is intelligently and diligently pursued. The Commission should impose these same conditions on any additional waiver applications.

1. The Commission Reasonably Required Each Waiver Recipient to Submit Plans to ERIC to Ensure Interoperability and Technical Consistency.

To avoid the possibility that early deployments might jeopardize interoperability, the Commission required the May 2010 waiver recipients to submit their actual plans to achieve interoperability to the Emergency Response Interoperability Center (“ERIC”) for evaluation and approval. The Commission had two goals in imposing this requirement. First, the Commission sought to ensure “technical consistency and interoperability.”⁴ Second, the Commission determined that the submission of interoperability showings in lieu of evidence of adequate funding for deployment would serve as “a sufficient safeguard to ensure that Petitioners’ plans are concrete and viable.”⁵ Both of these reasons are as valid today as they were in May, and the Commission should confirm the need for this safeguard as a continuing requirement for any future waiver recipient.

Maintaining interoperability is critical to ensuring a nationwide public safety broadband network. Long-term interoperability for the nationwide network must not be compromised by licensees who, while stating a willingness to provide interoperability, in fact have no specific plans that can be objectively evaluated by the ERIC to do so. To ensure that any early

⁴ *Id.* at ¶ 35; *see also id.* at ¶ 39 (“[W]e are also requiring Petitioners to submit an interoperability showing to ERIC to ensure that planned deployments are consistent with the Commission’s interoperability goals, and in recognition that the minimum requirements imposed herein may not guarantee interoperability”).

⁵ *Id.* at ¶ 35.

deployment pursuant to a waiver of the Commission's rules is pursued in a manner that preserves the bedrock goal of long-term interoperability, the Commission should, once again, expressly require waiver recipients to submit a detailed technical showing for ERIC evaluation and approval.

In its *Waiver Order*, the Commission expressly stated that the conditions it imposed were included “to ensure that the requests made are in earnest, and that deployments made pursuant to these requests are undertaken promptly.”⁶ With respect to interoperability showings, the Commission stated, “in light of the generalized nature of the information supplied in the waiver petitions, we find it is also appropriate to require the petitioners to work with ERIC prior to deployment and operation to develop more detailed network interoperability plans.”⁷ To provide expedient approval for deployment, the Commission required waiver recipients to submit their interoperability filings to ERIC within thirty days, and directed the Public Safety and Homeland Security Bureau to act on the interoperability submissions within sixty days.⁸

Notwithstanding these efforts to allow prompt and expedient deployment, the Bureau recently tolled its deadline to act on the interoperability showings submitted by a number of waiver recipients, concluding that the showings it had received were insufficiently developed. In particular, the Bureau concluded that, with the exception of a single waiver recipient, none of the showings submitted, and none of the quarterly reports submitted, “indicated that the Waiver

⁶ *Id.*

⁷ *Id.* at ¶ 55.

⁸ *Id.* at ¶ 56.

Recipient had completed the RFP process or selected a vendor for its network buildout.”⁹ The Bureau further concluded that, with the exception of a single recipient, “none of the Waiver Recipients submitting an interoperability showing has sufficiently progressed in its planning process to provide the needed level of certainty” with respect to technical specifications and interoperability plans.¹⁰

Future waiver recipients should learn from this experience. The Commission can and should expect that future interoperability showings will reflect more advanced planning. In the meantime, the limited and tentative nature of the interoperability showings submitted to date demonstrate the Commission’s foresight in conditioning grants “to ensure that progress is made, and that continued relief remains warranted.”¹¹ Further, a meaningful requirement for timely deployment, in the form of an express sunset provision for any waiver grant, would help “ensure that the requests made are in earnest, and that deployments made pursuant to these requests are undertaken promptly.”¹²

⁹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Order*, PS Docket No. 06-229, DA 10-1540, ¶ 4 (PSHSB Aug. 17, 2010). The single exception, the San Francisco Bay Urban Area, subsequently requested additional time to provide supplemental information. Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Order*, PS Docket No. 06-229, DA 10-1755 (PSHSB Sept. 16, 2010).

¹⁰ *Id.* at ¶ 6.

¹¹ *Waiver Order* at ¶ 35.

¹² *Id.*

2. *The Commission Reasonably Required Quarterly Progress Reports.*

The premise of any waiver seeking permission to pursue early deployment of a 700 MHz broadband network is that time is of the essence.¹³ Every petitioner seeking waiver of the Commission's rules to permit early deployment is, expressly or implicitly, representing to the Commission that its deployment cannot wait for the completion of regulatory proceedings. If a petitioner does not actually intend to deploy a network to begin providing its public safety agencies with the benefits of a broadband network in the near term, the public interest may be better served by waiting for the orderly and prompt resolution of the issues currently pending in the Commission's open 700 MHz D Block rulemaking proceeding. The *Waiver Order* sensibly addressed this concern by conditioning waivers on quarterly reporting requirements "to ensure that progress is made, and that continued relief remains warranted" and to "ensure that deployments are undertaken with diligence."¹⁴ Quarterly reports on the tangible progress each individual waiver recipient has made in its deployment plans thus help ensure that waivers are granted to those public safety agencies that have the ability and intention actually to pursue early

¹³ See, e.g., Letter from Jose A. Santiago, Executive Director Office of Emergency Management and Communications, City of Chicago, to the Public Safety and Homeland Security Bureau, PS Docket No. 06-229, 2 (June 23, 2010) (requesting grant without public notice and comment because "the delay from a public notice and comment procedure would severely impair the processing of waiver requests and in many instances would further impair petitioners' ability to seek available financing sources"); Expedited Waiver Request of the City of Chicago, PS Docket No. 06-229, 4 (filed June 25, 2010) (requesting "immediate grant" of Chicago's waiver request); Harris County, Texas Request for Waiver, PS Docket 06-229, 8 (filed Aug. 11, 2010)(requesting "expeditious" approval to allow Harris to proceed with deployment "without further delays"); Baton Rouge, Louisiana Request for Waiver, PS Docket 06-229, 2 (filed Aug. 18, 2010) (asking the Commission to act quickly to "enable rapid public safety broadband deployment...while the network contemplated by the Commission remains years from deployment").

¹⁴ *Waiver Order* at ¶ 35.

deployments. Accordingly, the Commission should require quarterly reports from any additional waiver recipients.

By granting the waivers with conditions, of course, the Commission intended that, where a petitioner did not comply with a condition, the waiver could and would be rescinded. The Commission should, however, make this explicit by reminding waiver recipients that failure to comply with each of the applicable conditions will result in waiver rescission. Furthermore, the Commission, in keeping with its stated goal of using quarterly progress reports “to ensure that progress is made, and that continued relief remains warranted,”¹⁵ should adopt an express sunset provision for waivers for those applicants that do not make substantial progress towards deployment. The waiver authority for any prospective 700 MHz public safety broadband network that has not commenced deployment within two years of grant should expire by its terms without any further action required by the Commission.

B. The Commission Should Impose An Additional Condition on Waiver Applicants Related to Their Progress in 800 MHz Reconfiguration.

The Commission’s 800 MHz Reconfiguration Decision represents a comprehensive reorganization of the 800 MHz band to eliminate unforeseen and unforeseeable interference between commercial cellular providers and 800 MHz public safety communications systems.¹⁶

¹⁵ *Waiver Order* at ¶ 35.

¹⁶ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, ¶ 4 (2004) as amended by *Erratum*, 19 FCC Rcd 19651 (2004) and *Erratum*, 19 FCC Rcd 21818 (2004) (“800 MHz Report and Order”).

The Commission mandated this process that Sprint Nextel has funded more than six years ago.¹⁷

The Commission has “made it abundantly clear that we expect band reconfiguration to move forward expeditiously.”¹⁸ As of this writing and as reflected in the monthly reporting Sprint Nextel makes to the Bureau, substantial progress has been made towards completing 800 MHz reconfiguration. In fact, *more than 90 percent* of all non-border area public safety licensees who must be retuned have TA-approved FRAs and are at various stages of retuning their systems.¹⁹

For some public safety licensees, however, a significant amount of work remains. The Commission should condition 700 MHz early deployment waivers on the TA’s approval of an FRA governing the reconfiguration of a waiver applicant’s 800 MHz systems. This targeted and reasonable condition will help promote the timely deployment of interoperable broadband in the 700 MHz while promoting the Commission’s 800 MHz Reconfiguration goals.

¹⁷ The Commission’s 800 MHz reconfiguration program requires Sprint Nextel to fund nearly all of the eligible, reasonable retuning costs of 800 MHz public safety incumbents. *800 MHz Report and Order* at ¶ 178.

¹⁸ Improving Public Safety Communications in the 800 MHz Band, *Third Memorandum Opinion and Order*, 22 FCC Rcd 17209, ¶ 47 (2007); *see also* Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, ¶ 8 (“one of the most critical of these goals is timely and efficient completion of the rebanding process, to ensure that the interference problem that threatens 800 MHz public safety systems is resolved as quickly and as comprehensively as possible”); *id.*, Joint Statement of Chairman Kevin J. Martin and Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell (“More important is that rebanding proceed as quickly and effectively as possible. After all, expeditiously eliminating interference between commercial and public safety users is the goal that motivates all of us. And we sincerely hope that all parties will keep their eyes on that prize even as they work through the details of this complex process.”)

¹⁹ *See* Letter from Lawrence R. Krevor, Vice President, Spectrum, Sprint Nextel, to David Furth, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, WT Docket No. 02-55 (Oct. 1, 2010).

1. Completing 800 MHz Reconfiguration Remains A Critical, Unrealized Priority for The Nation and for Certain Petitioners.

Public safety advocates correctly emphasize the importance of existing and planned land mobile voice radio systems for the delivery of mission critical public safety communications.²⁰ The Public Safety Spectrum Trust (“PSST”) has stated that future public safety broadband data networks and devices will not offer voice capability for many years, and even then will not include the “one-to-many” and “talk around” capabilities essential to mission critical public safety communications. The PSST adds that a decade or more may be needed for public safety broadband networks to match the extensive geographic coverage, reliability and mission-critical voice capabilities supported by existing land mobile systems.²¹ As a practical matter, few parties seriously dispute that most public safety agencies will rely on their existing 800 MHz land mobile public safety communications systems for many years; indeed, some agencies are expanding or planning to expand their 800 MHz capacity and coverage as formerly “interleaved” 800 MHz channels are “freed-up” for reassignment as a collateral benefit of reconfiguration progress. Because the 800 MHz reconfiguration helps promote the continued interoperability of mission-critical public safety voice communications, the Commission can and should require a

²⁰ The Public Safety Spectrum Trust has stated that: “Immediate mission critical voice capabilities are clearly the highest priority today for public safety users....” Letter from Chief Harlin R. McEwen, Chairman, Public Safety Spectrum Trust Corporation, to Jennifer A. Manner, Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, GN Docket No. 09-5, PS Docket No. 06-229, WT Docket Nos. 06-150 and 96-86 (October 1, 2009).

²¹ The Public Safety Spectrum Trust notes that: “The reality of broadband coverage buildout, standards and equipment deployment, testing in the public safety environment, and follow-on procurement means it would likely be 10-15 years or more before most public safety entities would be in a position to seriously consider substituting broadband voice for today’s LMR mission critical voice solutions.” *Id.* at 4.

700 MHz waiver applicant to complete the fundamental milestone necessary to reconfigure its 800 MHz voice network before it begins to plan or construct its 700 MHz broadband facilities.

2. *Petitioners With TA-Approved FRAs Governing Their 800 MHz Reconfiguration Should Be Eligible for Waivers for Early Deployment of 700 MHz Networks.*

Reaching agreement with Sprint Nextel on the terms of 800 MHz reconfiguration, and securing TA approval for that agreement, is a fundamental milestone in each 800 MHz licensee's reconfiguration process. Once the TA has approved an FRA, the actual work of reconfiguring a licensee's 800 MHz radio systems can begin. TA approval of an FRA thus represents a reasonable benchmark demonstrating that the licensee in each case has a concrete plan for progress towards the critical goal of completing 800 MHz band reconfiguration. Notably, a TA-approved FRA is a precondition to the applicant obtaining funding from Sprint Nextel to implement its reconfiguration plan.

Sprint Nextel previously opposed the grant of waiver submitted by petitioners that had not yet completed 800 MHz reconfiguration. The Commission rejected this proposal, concluding that substantial progress had been made in reconfiguration, that Sprint Nextel's concern was "speculative," and that "the Commission has sufficient mechanisms to deal with unwarranted delays."²² The condition Sprint Nextel now proposes is limited in scope and applicability and addresses a significantly narrower problem in a more targeted manner: the Commission should not permit 700 MHz waiver applicants that have made virtually no 800 MHz reconfiguration progress in nearly five years to commence planning and building 700 MHz broadband networks without having first achieved the fundamental TA-approved agreement necessary to initiate

²² *Waiver Order* at ¶ 69.

actual 800 MHz reconfiguration implementation. Only those public safety licensees that have moved in earnest to establish basic voice operability demonstrate the requisite commitment to implement new interoperable broadband systems using valuable 700 MHz “beachfront” spectrum.

In the case of the instant petitions, the great majority meet this basic and objective measure of progress toward establishing reliable voice communications. Of the twenty-four petitioners currently requesting waivers to permit early deployment, twenty-two have already executed TA-approved FRAs with Sprint Nextel. The Commission should condition any 700 MHz broadband waivers it may grant to the remaining applicants (and any future waiver applicants that do not have a TA-approved 800 MHz FRA) on their obtaining the TA’s approval of a negotiated reconfiguration agreement. This limited condition will help ensure that 800 MHz reconfiguration is accomplished and further the Commission’s stated goals of ensuring that waiver requests are made in earnest and deployments promptly undertaken.

a. Deployment of a Broadband Public Safety Network Will Pose Even Greater Challenges than 800 MHz Reconfiguration.

Pursuant to the Commission’s orders concerning reconfiguration of the 800 MHz band, Sprint Nextel is charged with paying the reasonable and prudent costs of each licensee’s reconfiguration of its 800 MHz radio systems. Thus, each 800 MHz reconfiguration project proceeds with a secure and dedicated source of funding, and without the need to marshal local, state, or other sources of funding. Deployment of 700 MHz public safety broadband networks has no such guaranteed funding source, and actual deployment likely will be dependent on individual petitioners’ abilities to obtain budget approval for substantial capital expenditures. Indeed, estimates of the cost of deploying a national public safety broadband network suggest

that the initial deployment costs alone would be several billion dollars.²³ Part of the Commission's rationale in granting the original set of twenty-one waiver requests was to potentially allow those petitioners to take advantage of temporarily available funding, including giving weight to several petitioners' assertions that they would pursue stimulus funding.²⁴ Setting aside the question of whether the initial group of waiver recipients did, in fact, pursue funding opportunities they indicated were time-sensitive (thus warranting waiver relief), those funding opportunities may simply no longer be available to this latest group of petitioners.

Putting aside the uncertainty over funding sources, both planning and implementation associated with the deployment of an entirely new network are much more complex than most 800 MHz reconfiguration projects. For 800 MHz reconfiguration, where the goal is simply to retune some frequencies on an existing system to operate on new frequencies, licensees frequently needed to replace little or no subscriber or infrastructure equipment depending upon the system's general age and capabilities. Deployment of an entirely new public safety broadband network will, in virtually all cases, be significantly more complex, require significantly more planning, and present significantly greater logistical and implementation

²³ Comments of Ericsson Inc., PS Docket No. 06-229 at 6, n. 13 (Oct. 16, 2009) ("Ericsson estimates the needed funding for a nationwide network to be in the range of \$9 to 12 billion, not including categories such as back office IT and handset devices. The approximate operational cost of just the network will be on the order of \$300 to 400 million per year, which also does not include factors such as customer care, IT and handset devices."); *see also* Comments of AT&T, Inc., PS Docket No. 06-229 at 19, citing Letter from John T. Scott III, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 06-229 (April 4, 2007) ("Indeed, it has been estimated that a nationwide network deployed using a leveraged network model would have an initial cost of \$13 billion and a 10-year total cost of \$35 billion....")

²⁴ *See Waiver Order* at ¶ 10 ("Action now will provide Petitioners with a degree of certainty, allowing them to take advantage of funding opportunities and leverage existing deployment plans that may be time sensitive.")

challenges. Demonstrating an objective step towards progress in completing reconfiguration of its 800 MHz system is a reasonable, and not unduly stringent, test of a petitioner's ability to deploy a new network successfully. TA approval of an FRA governing reconfiguration of a petitioner's 800 MHz system is a benchmark that should be applied to the current and future early deployment waiver candidates. Moreover, this condition would not add to the burden of any public safety licensee because each licensee already has the obligation to complete 800 MHz rebanding.

b. Two Petitioners Do Not Yet Have TA-Approved FRAs.

Two petitioners seeking waiver of the Commission's rules to allow pursuit of deployment of an entirely new public safety broadband network have not yet entered into TA-approved FRAs. Specifically, the State of Louisiana and the State of Washington have not yet executed and received approval for their FRAs. Both entities received substantial financial support from Sprint Nextel in the form of planning funding to assess the characteristics of their networks and subscribers, to better plan their reconfiguration projects and prepare cost estimates. Both entities have been granted significant extensions of time to complete reconfiguration. Despite the substantial time and significant funding, these licensees have not commenced reconfiguration by obtaining TA-approved FRAs.

Reconfiguration of individual licensee's systems is impossible without a TA-approved FRA that allows the physical reconfiguration work to begin. These petitioners are thus severely behind schedule in *starting* the reconfiguration of their 800 MHz voice systems. Beyond the concern that these systems must be retuned to reduce the potential for harmful interference to public safety communications, these delays also raise concerns as to the ability of these particular petitioners to undertake a massive project such as planning and executing a 700 MHz

network while they are still at the early stages of addressing a long-pending Commission requirement to move 800 MHz voice operations to new frequencies.

The Commission should carefully consider the experience of these petitioners, or of any future petitioners, in making progress towards the reconfiguration of their 800 MHz voice systems. Not only does the 800 MHz experience weigh on the ability of such petitioners actually to execute a successful deployment in a timely fashion, but also beginning the physical work of reconfiguration to mitigate harmful interference should remain the top priority for these petitioners.

III. CONCLUSION.

Sprint Nextel supports the goal of a nationwide interoperable broadband public safety network. Sprint Nextel further supports early deployments, provided that those applicants receiving waivers demonstrate an ability to plan, build and operate efficient systems that can interoperate with those of other public safety agencies. Rigorous and timely enforcement of the conditions the Commission has previously imposed on waiver recipients – combined with attention to the applicants’ progress in transitioning to fully operable 800 MHz voice networks – should ensure that waiver requests are made in earnest and that waiver recipients actually undertake the proposed broadband deployment in a reasonably prompt manner.

For the foregoing reasons, the Commission should grant the requests for waiver in this matter, subject to the same conditions previously imposed, where a petitioner has a TA-approved FRA governing the terms of its 800 MHz reconfiguration project.

Respectfully submitted,

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